UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 22-10964-mg

Adv. Case No. 23-01138-mg

- x

In the Matter of:

CELSIUS NETWORK LLC,

Debtor.

- x

CELSIUS NETWORK LIMITED,

Plaintiff,

v.

STAKEHOUND SA,

Defendant.

- x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004

August 29, 2023

10:58 AM

B E F O R E :

HON MARTIN GLENN

U.S. BANKRUPTCY JUDGE

ECRO: KS

HEARING re Adversary proceeding: 23-01138-mg Celsius Network Limited v. StakeHound SA Hearing Using Zoom for Government RE: TRO (Doc # 29, 31, 33 to 42, 49, 50, 51).

Transcribed by: Sonya Ledanski Hyde

A P P E A R A N C E S :

AKIN GUMP STRAUSS HAUER FELD, LLP
Special Counsel for the Plaintiff,
Celsius Network Limited
One Bryant Park
New York, NY 10036

BY: MITCHELL HURLEY
ELIZABETH SCOTT

LOCKE LORD LLP
Attorneys for the Defendant, StakeHound
Brookfield Place, 200 Vesey Street
20th Floor
New York, NY 10281

BY: MARY STEPHANIE WICKOUSKI
SEAN ANDREW FEENER
JEFFREY KRAMER

WHITE & CASE LLP

Attorneys for Official Committee of Unsecured Creditors

1221 Avenue of the Americas

New York, NY 10036

BY: KEITH WOFFORD

ALSO PRESENT TELEPHONICALLY:

ALBERT CASTELLANA

NELLY ALMEIDA

CHRIS BECIN

EDWARD G. BIRCH

SHARA CLAIRE CORNELL

CARL J. COTE

TRISTAN DIAZ

DENNIS F. DUNNE

DAVID AVERY FAHEY

FLORENCE FLANNIGAN

DANIEL A. FRISHBERG

SANDALI HANDAGAMA

CHRISTOPHER LACKEY

ANDREW M. LEBLANC

MICHAEL D. MORRIS

ABIGAIL RYAN

NOAH M. SCHOTTENSTEIN

COURTNEY BURKS STEADMAN
LUCY L. THOMSON
TONY VEJSELI
MELANIE WESTOVER YANEZ
DAVID BARSE
DEBORAH FRANKEL
DEAN CHAPMAN
AARON COLODNY
CAROLYN GURLAND
SAMUEL P. HERSHEY
MICHAEL JAOUDE
NICHOLAS LOMBARDI
GREGORY F. PESCE
DAVID TURETSKY
JOSHUA WEEDMAN
RICKIE CHANG
DAVID J. DALHART
SIMON ELIMELECH
BRADLEY GIARDIELLO
TAMMY L. GROVER
JON HATCHER
ALAINA HEINE
KRAIG JAKOBSEN
JEAN-PHILIPPE LATREILLE
KEVIN M. MANUS

MATTHEW W. MARCUS
DONALD L. POYNTER
JEFF PATTON
JONATHAN RODRIGUEZ
DAVID RYAN
PRIYA SAIHGAL
JACK SCHICKLER
DAVID SENES
ALLISON SPARKS
PETER J. SPROFERA
CHRISTOPHER D. WALTON
ROBERT M. KAUFMANN
RAKESH PATEL
JASMINE ARMAND
CHRISTOPHER COCO
THOMAS DIFIORE
MIRA HAQQANI
TAYLOR HARRISON
KEITH NOYES
MASON PALISSERY
MARK ROBINSON
MICHAEL STANLEY
VICTOR L. UBIERNA DE LAS HERAS
ANDREW YOON
KAILA ZAHARIS

P R O C E E D I N G S

CLERK: All right. Starting the record for August 29th, 2023 the 11 a.m. hearing. Calling Celsius Network LLC, Case No. 22-10964 and the following case, Case No. 23-1138 Celsius Network Limited versus StakeHound SA. If we could have counsel unmute meet their line and state their appearances, please.

I think we have -- is anyone in the conference room going to be speaking? I see Stephanie. I can't recognize anyone else. All right, you can pause it for now.

MAN: -- muted. Oh, there we go.

MS. WICKOUSKI: Sorry, this is -- can you hear me now?

CLERK: Yes, I can.

MS. WICKOUSKI: So this is Stephanie Wickouski from Locke Lord on behalf of the defendant StakeHound SA, and here with me in the Locke Lord conference room is my colleagues Jeff Kramer and Sean Feener.

CLERK: All right, thank you.

MS. WICKOUSKI: And both myself and Mr. Kramer will be addressing the Court this morning.

CLERK: All right. Thank you so much You can pause the recording.

(Pause)

CLERK: For the parties that have joined, if

anyone is speaking on the record this morning, please unmute your line and state your name.

Yeah, Ms. Scott, are you going to be speaking?

MS. SCOTT: Good morning. I'm not certain, but I'll go ahead and enter my appearance if that's okay.

CLERK: Sure.

MS. SCOTT: Elizabeth Scott from Akin Gump, special litigation counsel to the Debtors.

CLERK: All right. Thank you. We have --

MS. SCOTT: Ms. Anderson, we have with us on the screen, Albert Castellana who's representative of our client StakeHound who is a witness, having submitted a declaration. So he's also available.

CLERK: Thank you. All right, you can pause the recording.

(Pause)

Oh, all right, for the parties that have joined, if you could unmute your line one at a time and state your appearance for the record.

Mr. Hurley, maybe we could start with you.

MR. HURLEY: Good morning. Mitch Hurley with Akin Gump, special litigation counsel for Celsius.

CLERK: All right. Thank you. Is there any other party on the line that is speaking this morning? If so, I unmute your line and state your appearance.

MS. WICKOUSKI: Good morning. This is Stephanie Wickouski from Locke Lord on behalf of StakeHound SA and I'm here with my colleagues Jeffrey Kramer and Sean Feener and Mr. Kramer and I will be addressing the Court.

CLERK: All right. Thank you. Mr. Wofford, are you going to be speaking this morning?

MR. WOFFORD: I don't anticipate as such, but I will enter an appearance. Keith Wofford on behalf of the Official Committee of Unsecured Creditors from the firm White & Case LLP. Good morning.

CLERK: Good morning. Thank you. All right. Any additional parties that have joined that are speaking on the record this morning? If so, please unmute your line and state your appearance.

MS. WICKOUSKI: Ms. Anderson, this is Stephanie Wickouski for the record. I just wanted to note that what our declarant Albert Castellans is also on the call to be available for cross examination.

CLERK: All right, thank you.

MR. HURLEY: May I just interject there please, Deanna? I -- my understanding from the judge is that he had said specifically this was not going to be an evidentiary hearing.

CLERK: Well, to my knowledge, I'm not sure Mr. Hurley how this affects things, but you could definitely

bring it up to him and he'll make the determination.

MR. HURLEY: Okay.

CLERK: Yeah.

MS. WICKOUSKI: And Ms. Anderson, for the avoidance of doubt, I wasn't suggesting as to how the Court would be conducting this hearing, but because we had submitted Mr. Castellana's declaration as a matter of form, we were required to produce him in person on the Zoom for cross examination if the parties wished.

CLERK: All right. Thank you.

MR. HURLEY: Just to be clear, the only -- I don't have any objection to Mr. Castellana being here. It's only that we, based on that understanding, our declarants are not here, which, you know, obviously we'll address that with the judge if he has an issue with it.

CLERK: Perfect. Thank you. All right, please pause the recording for now.

(Pause)

THE COURT: Yes, please.

CLERK: Sorry about that.

THE COURT: Sorry about that. Again, I apologize. I was connected for an earlier hearing without any difficulty on my computer. I can't reconnect on it. And so you see me without my courtroom virtual background. I'm doing this on my iPad. I can see all of you, though. Mr.

Hurley, are you going to begin?

MR. HURLEY: Yes, Your Honor. Again for the record, Your Honor, it's Mitch Hurley with Akin Gump, special litigation counsel for Celsius. We're here on Celsius' motion for a temporary restraining order.

I want to start, Your Honor, by making crystal clear what it is that Celsius is seeking on this motion and what it's not seeking. The relief that Celsius seeks today is quite limited. It is a order preserving the status quo for a short period of time. The period of time specifically is from today through the day on which Your Honor -- or through the time at which Your Honor is able to hear and determine the motion for a preliminary injunction. That motion is scheduled to be heard on September 27th. So we're talking about a period of about four weeks.

In terms of the restraint, what we're seeking is an order preserving the status quo with respect to the subject assets for that four-week period of time, but subject to the provision in the proposed TRO that provides a safety valve so that in the event that during that, even that brief period of time there is some truly urgent expense, it can be brought to the attention first of Celsius and if parties can't reach agreement, then to Your Honor.

Preserving the status quo is of critical importance to Celsius in this case. That is because Celsius

has claims against StakeHound upwards of $160 million and understands that StakeHound's assets are limited to about $90 million, virtually all of which are assets that were provided to it by Celsius in the first instance so that any dollar that's spent between now and the 27th is a dollar that cannot be recovered by Celsius if and when it prevails on its claims with respect to the assets that it provided.

So before I get into the specifics of my argument, Your Honor, I thought it would make sense just to provide a refresher on some of the -- some of the main facts in the case and I'll do this quickly and limit myself to what I understand to be undisputed facts.

So StakeHound launched its business at the end of 2020. The business was providing liquidity to holders of staked tokens, primarily ETH. At that time, ETH tokens when they were staked were not available to be retrieved by the staker and wouldn't become available until an event anticipated in the future referred to as the upgrade sometimes called the Shanghai upgrade, after which ETH would become available to be retrieved.

At the time, the anticipation was that it would take two years or more before that event happened and in the event, it actually did take longer than two years, the Shanghai upgrade wound up taking place on April 12th, 2023. StakeHound's business was providing one stETH in exchange

for one native ETH that was staked. StakeHound would run the notes. The parties would split the rewards from the staked ETH and the customer would be able to use the stETH on defi applications and then when ETH became available exchange it on a 1-to-1 basis for the ETH.

It's undisputed that Celsius was not only StakeHound's first customer, it effectively was its only customer from the perspective, at least, of assets contributed. StakeHound itself alleges that of all the ETH that StakeHound ever got, 96 percent of it was provided by StakeHound -- by Celsius. And let me describe that very briefly.

In November of 2020, Celsius had staked about 25,000 ETH and in January of 2021, it determined to transfer the notes for that 25,000 November ETH to Celsius in exchange for the same number of stETH. It did that pursuant to an agreement called the Stake and Services Agreement or the SSA and StakeHound got back exactly the same number of stETH as associated with the notes in November.

In February, Celsius determined to stake another 35,000 ETH with StakeHound. It did that pursuant to StakeHound's ordinary terms and conditions and it got back exactly the same number of stETH for the 35,000. In April, the parties entered into an agreement called the Revenue Sharing Agreement and pursuant to that agreement, Celsius

provided about 40 million native MATIC tokens and hundreds of thousands of native DOT tokens to StakeHound and got back exactly the same number of stMATIC and stDOT, again with the expectation of a 1-to-1 exchange being available.

It's undisputed that in May, the next month, some combination of StakeHound and Fireblocks, the entity that StakeHound hired to provide security for its tokens, made a catastrophic mistake and some combination of those two parties -- they point the finger at one another -- lost the pass keys for the February 35,000 ETH and StakeHound has alleged that it is now irretrievable. And so -- but assured Celsius at the time that the November ETH remained secure, and we understand that November ETH in fact does remain secure.

So fast forward now to April 2023, and let me just back up. In June of 2021 StakeHound alleges that it shuttered its operations, its liquidity staking operations, et cetera, and the understanding now is that effectively what it's doing since then is collecting rewards, basically collecting interest on the coins that are staked and these are coins that were provided by Celsius.

Now fast forward to April 2023. Celsius learns that the Shanghai upgrade is likely imminent. On April 10th, we send a letter to StakeHound demanding that they confirm that once the upgrade occurs and the assets become

available, that they will do what they're required to do under the SSA which is transfer those assets to a separate wallet and then allow us to exchange our stETH for the November ETH which is the only ETH that was subject to the SSA and which is the ETH that remains secure.

On April 12th, two things happened. First, the Shanghai upgrade occurred. And second, we got a letter from StakeHound saying that they were refusing.

THE COURT: Mr. Hurley, can --

MR. HURLEY: Yes.

THE COURT: -- just hold on a minute? I -- while I've been listening carefully to you, but I've also rebooted my computer and it seems to want to allow me in. So let me see if we can do this smoothly, okay?

MR. HURLEY: Yeah, yeah.

THE COURT: What I'm going to do is mute my sound so I don't get feedback.

CLERK: -- you, Judge.

THE COURT: All right, I'm closing my -- just give me -- all right, can you hear me?

MR. HURLEY: Yes.

THE COURT: Hold on. I still haven't managed to close my iPad.

MR. HURLEY: Okay. I had a similar issue on our last hearing, so I have sympathy.

THE COURT: All right. Can you hear me now?

MR. HURLEY: Yes.

THE COURT: Good. Okay. I did hear everything you had to say, so just pick up from where you were.

MR. HURLEY: Okay, will do.

So undisputed that Celsius made a demand for exchange of its ST tokens for native tokens and that demand was refused. That was April 12th. On April 17th, Celsius wrote back and said among other things that any failure to turn the tokens over could result in significant liability under the Bankruptcy Code, referencing this bankruptcy proceeding, but offered in that letter to enter into a standstill to see if the parties could negotiate.

Rather than respond to that letter, StakeHound filed an arbitration in Switzerland in late April, in violation, we contend, of the automatic stay. On May 1st, Celsius wrote and demanded withdrawal of the arbitration, but again, offered to sit down and have a discussion. We did not receive a response to that communication.

On May 25th, Celsius sent a letter to StakeHound saying, please, we tendered our stMATIC and our stDOT and demanded returned of the native MATIC, the native DOT. That letter was never responded to and the native MATIC and native DOT was never returned and no excuse for the failure to return the native MATIC and native DOT has ever been

offered by StakeHound.

We made some other efforts to see if there could be a resolution. We weren't able to get there. We filed in July, the original complaint in this case, seeking our certain claims based on the violation of the automatic stay and based on Celsius' refusal to exchange ST tokens for native tokens. This motion, as I mentioned before, seeks just for the next four weeks to ensure that the property that's at issue, those native tokens -- virtually all of which were provided to StakeHound on by Celsius -- will remain there for Your Honor to decide what to do with them in four weeks.

We think that the standards for getting a temporary restraining order are readily met on the facts of this case and I'm just going to turn now to our argument, Your Honor, and I'll start with the standard for entry of the temporary restraining order. The elements are familiar.

You have to show irreparable harm, likelihood of success on the merits, and balance of the harms weigh in favor of the movant, or sufficiently serious questions going to the merits of the movant's claims to make them a fair ground for litigation, and that the balance of harms tips decidedly in the movant's favor. We think that we readily meet both standards here, Your Honor and I want to start --

THE COURT: Let me interrupt you.

MR. HURLEY: Sure.

THE COURT: And my questions, and I do have multiple questions, but I'll ask one now, is the effect of the Supreme Court's decision in Grupo Mexicano v. Alliance Bond Fund, 527 U.S. 308 (1999), you didn't address it at all in your brief. Ms. Wickouski has a footnote in her brief that at least cites Grupo Mexicano, and I guess my question is specific. And I've reviewed both the original complaint and the amended complaint.

And tell me which of the claims in the amended complaint you believe permits the Court to enter a TRO with respect to the asset freeze. Let's put aside the issue of alleged violation of the automatic stay in commencing the arbitration. I'm focusing on the asset freeze issue. So tell me specifically which claims in the amended complaint you believe would permit the Court to enter the TRO with an asset freeze.

MR. HURLEY: Certainly. May I first just respond to the, the point about whether Grupo Mexicano changed the role in the Second Circuit? Because I have the specific cite for Your Honor if that would be helpful.

THE COURT: Sure. Go ahead.

MR. HURLEY: Okay. So the Second Circuit addressed this exact question in Citigroup v. VCG. That's 598 F.3d 30 (2d Cir. 2010). And this is what the Second

Circuit had to say when it made clear that notwithstanding Grupo Mexicano, the standard that the Circuit had traditionally applied remains in place. And this is a quote.

"The value of this Circuit's approach to assessing the merits of a claim at the preliminary injunction stage lies in its flexibility in the face of varying factual scenarios and the greater uncertainties inherent at the outset of particular complex litigation. Preliminary injunction should not be mechanically confined to cases that are simple or easy, requiring in every case a showing that ultimate success on the merits is more likely than not is unacceptable as a general rule.

"The very purpose of an injunction is to give temporary relief based on a preliminary estimate of the strength of the plaintiff's suit prior to the resolution at trial of the factual disputes and difficulties presented by the case. Limiting the preliminary injunction to cases that do not present significant difficulties would deprive the remedy of much of its utility." That's the Second Circuit on that point, Your Honor.

THE COURT: What's the year of that, of the Citigroup decision?

MR. HURLEY: That's 2010, more than ten years after a Grupo Mexicano, in other words.

THE COURT: And does it address Grupo Mexicano over there?

MR. HURLEY: Yes.

THE COURT: And how -- I've read a lot of cases in the last two days and I don't think that's one of them. How does it distinguish Grupo Mexicano?

MR. HURLEY: Sorry, the -- I think what it finds is that there's nothing in Grupo Mexicano that requires a change in the Second Circuit's standard and the Second Circuit, based on that conclusion in Citigroup explained why it continues to maintain the same standard, which is that you have two ways of getting to likelihood of success on the merits.

THE COURT: And would -- and I do need to read it. I'm not going to rule from this hearing, you know, from the bench today. Does the Citigroup decision permit a TRO if the only claim asserted is a breach of contract claim?

MR. HURLEY: I confess, I don't know the specific answer to that question, Your Honor, but coming back to the other question that you had about what claims we believe support the relief that we're seeking --

THE COURT: Right.

MR. HURLEY: -- it's not only the breach of contract claim. It's also --

THE COURT: I don't think -- personally, I don't

think the breach of contract claim does support it. I will read Citigroup with great interest, but you know I read Grupo Mexicano as precluding an asset freeze in a breach of contract case. It's -- that -- well, but go -- I want to read Citigroup. I've read a lot of cases over the last couple of days because you didn't brief any of this. So you don't know whether Citigroup -- what were the claims asserted in the Citigroup case?

MR. HURLEY: Your Honor, I -- my familiarity with the specific facts of Citigroup isn't that great. It's really -- I really just cited for the proposition that the notion that that Grupo Mexicano changed the standard and the Second Circuit has been directly contradicted by the Second Circuit.

THE COURT: Let me ask you. Did it address, did that decision address Grupo Mexicano?

MR. HURLEY: Yes, Your Honor. It did. What I read was specifically in response to a contention that the standard has been changed as a result of a Grupo Mexicano.

THE COURT: All right. Let's hold on. I'm going to open the decision on another -- on the iPad which I'm not using now for the Zoom. Just bear with me.

MR. HURLEY: And Grupo Mexicano, Your Honor, is really, I think is a question about what constitutes irreparable injury. And in our case, we're obviously

relying on the contention --

THE COURT: I don't read Grupo Mexicano that way. Okay?

MR. HURLEY: Okay.

THE COURT: I read it as not permitting an asset freeze. It's a collection mechanism in a breach of contract dispute before there's a judgment and a judgment lien attaching. And bear with me. Just give me a moment here, okay? Because I do think this is important. If I've misread Second Circuit law on it, well, then I'll stand corrected.

MR. HURLEY: But again, I -- well. So the Citigroup case is from 2010 and just to be really clear, the only thing that we're citing that Citigroup case for, Your Honor, is the proposition that the standard in the Second Circuit, notwithstanding some Supreme Court case law that people had argued might have changed the standard in the Second Circuit, the standard in the Second Circuit remains that there was more than one way to satisfy the likelihood of irreparable harm prong of seeking a preliminary injunction.

And that it includes situations where if the balance of the equity is weigh strongly in favor of the movant, that the standard for demonstrating likelihood of success is lower. And I and I do apologize, Your Honor,

that this hasn't been the focus of my preparation. Certainly to the extent Your Honor is not going to rule today and you'd like some additional very brief submissions, we could do that, but our citation again of this Citigroup is for that limited purpose.

THE COURT: All right, I have the case. You don't have the case in front of you, do you?

MR. HURLEY: I do not, Your Honor.

Your Honor?

THE COURT: Yes.

MR. HURLEY: Let me direct your attention. I actually now have the case in front of me, and --

THE COURT: Which page?

MR. HURLEY: Yeah, so it is page -- sorry, looking for the cite. It would be *34 discussion, and my recollection of the Supreme Court cases that were being discussed was incorrect. The Supreme Court cases that were being discussed there were Munaf, Winter, and Nken, and --

THE COURT: What were the underlying claims in Citigroup?

MR. HURLEY: Well, Your Honor, I'm afraid I have to give the same answer because I've just opened it up, but if you see under Section 1, the continued viability of the serious questions standard.

THE COURT: Well, I don't doubt that the serious

question standard applies, but query whether it applies if it's being used as a collection tool, okay. So you added a constructive trust claim and there's caselaw that would permit a TRO or preliminary injunction with an asset freeze in support of a viable constructive fraud, you know, constructive trust claim.

And I assumed that one of your minions decided we better add that claim to the complaint because otherwise we may be in trouble with respect to the Grupo Mexicano standard. Perhaps I read too much into the addition of that claim, but I'm not sure, you know, simply alleging -- if I'm wrong -- put it this way. If I'm wrong, if the Second Circuit overruled the Supreme Court's Grupo Mexicano ruling which says it just simply doesn't apply in the Second Circuit -- it would be pretty neat trick if it did --

MR. HURLEY: That's certainly not what I'm suggesting, Your Honor, and I apologize for the miscommunication over Citigroup. With respect to Grupo Mexicano, you are correct that we cite a number of -- or sorry, that we allege a number of claims that we think are not subject to the holding of Grupo Mexicano.

THE COURT: Tell me which claims. That was -- to go back, that's what my question was. Tell me which claims you believe would permit the Court, assuming that the normal standard for injunctive relief is -- has been satisfied,

that would permit the Court to enter a TRO or preliminary injunction.

MR. HURLEY: Certainly the claim for the -- for an accounting, unjust enrichment, the claim for constructive trust, the claim for conversion.

THE COURT: Conversion, I -- well, go ahead. Give me the list, okay.

MR. HURLEY: Those are the claims that we think would justify the injunction.

THE COURT: I thought conversion is a legal claim, not an equitable claim. What I read Grupo Mexicano is saying that Rule 65 of the Federal Rules of Civil Procedure does not provide for an equitable remedy for legal claims. And so, you know, unjust enrichment, that claim won't even stand if the underlying circumstances are governed by contract. There is a contract between the two of you. Conversion, I understood be a legal claim. Constructive trust is an equitable -- can be an equitable claim. Accounting, I'm not sure about. Do you have -- is an asset freeze permissible for an accounting claim? You have authority? Look, I'm -- let's make no secret about it. I'm going to require a supplemental brief from you. You didn't address this at all. Ms. Wickouski only sort of backhandedly has one, Footnote 5, I think, that along with a number of other sites refers to the Grupo Mexico -- Mexicano

decision. But I think this is a serious issue.

MR. HURLEY: Certainly, Your Honor. We're happy to.

With respect to your conversion, there are equitable remedies associated with conversion, including disgorgement. And to be clear, a reason that we amended the complaint to add those extra contractual claims is because StakeHound actually in an April 12th letter had said that they view the contract as having been terminated.

THE COURT: Well, that's fine, but that doesn't mean -- it maybe breached, but, you know, you assert breach of contract claim, among other things.

MR. HURLEY: Correct. We're asserting these claims in the alternative, Your Honor. If it were to be concluded later in the case that there isn't a contract governing those claims.

THE COURT: Look, I've looked at lots of cases that deal with availability of a TRO in light of Groupo Mexicano. I mean, one of the citations I give you is one of Judge Gerber's opinions in Adelphia, 323 B.R. 345. He's got a long footnote at Page 360, Note 18. It's a 2005 Bankruptcy Court decision. It's a very lengthy and scholarly discussion of this issue.

There are -- actually, I did not -- and I'll read the Citigroup -- I didn't find a post Groupo Mexicano Second

Circuit decision that clearly addresses this issue. There are cases in other circuits, the -- bear with me. The Third Circuit's Owens Corning decision, 419 F.3d 195, 209 (3d Cir. 2005), but it's in the context of a substantive consolidation. But it's a very lengthy discussion about Groupo Mexicano.

There are -- there are a number of Bankruptcy Court decisions that say that Group Mexicano doesn't apply to fraudulent conveyance claims, for example. But I haven't found any in the search I made that really get close to what this dispute is about. And I don't -- you know, I will read the Citigroup decision carefully. But what you've described so far doesn't sound to me that it somehow found its way around the Groupo Mexicano decision. There's no question in my mind that if a complaint contains both legal claims and equitable claims, Rule 65 permits injunctive relief with respect to the equitable claims, but not the legal claims.

And when you file a supplemental brief, if you say you're relying on four causes of action -- accounting, unjust enrichment, conversion, and constructive trust as supporting the equitable -- the asset freeze that you're seeking, you'll address that in a brief.

I would say this, Mr. Hurley, that simply including one of those claims, you know, denominating it as such, is not going -- I have to be satisfied at a minimum

that the elements -- the elements of the claim have been adequately pleaded before, you know, just labeling something as constructive trust is not going to get you over the hurdle. Okay?

MR. HURLEY: And let me just clarify two things, Your Honor. I want to apologize. With respect to Citigroup, I misspoke. I'm not suggesting that Citigroup gets around Groupo Mexicano. It was actually dealing with other Supreme Court cases. And I apologize for that. Would welcome the opportunity, Your Honor, to explain why we think under the circumstances here Groupo Mexicano is not a bar with respect to the relief that we're seeking.

Certainly with respect to the Groupo Mexicano issue, that issue is not applicable in our view to the non-contract claims. We think that we're going to be able to provide caselaw to Your Honor to satisfy you, we hope, that the relief is justified with respect to other claims as well in the circumstances presented here.

THE COURT: Let me make it clear that I am not suggesting that you haven't appropriately stated equitable claims that would entitle you to injunctive relief. It hasn't been addressed.

MR. HURLEY: I understand, Your Honor. And I'm only trying to clarify --

THE COURT: I have a very open mind about it. I'm

just telling -- to make it clear, I'm not pushing back because I don't think you're entitled to a TRO. I don't think you've satisfied me based on the briefing in light of Groupo Mexicano -- you know, the Mareva Injunction issue, you know, has been a worldwide issue. You know, it could well be, Mr. Hurley, that an arbitrator in Switzerland could grant you the relief you're seeking. It even may be that a state court -- this can't be in state court, but that a state court in an appropriate can't grant it. It's just that the federal courts can't.

MR. HURLEY: Understood, Your Honor. And I just want to be crystal clear. We welcome the opportunity to brief the question. We think that the equitable claims solve the Groupo Mexicano issue. We may have authority to cite to Your Honor -- I think we will -- that there is a broader resolution and that this kind of TRO and injunction can be granted, including with respect to other claims. We appreciate the opportunity to do some additional briefing and really welcome it. I apologize that haven't done it already.

THE COURT: That's fine. That's fine. And I assume you'll want to do it quickly.

MR. HURLEY: Absolutely.

THE COURT: And I'm going to give Ms. Wickouski a chance to respond. I mean, she has this one note Footnote

5. And I'm not sure I agree with the text that she has about it. She may have been able to make a stronger argument than she did in her brief. Okay. Okay. Go ahead.

MR. HURLEY: Okay. So let me proceed to the question of irreparable harm.

So in the Second Circuit, Your Honor, irreparable harm exists where the defendant is insolvent, on the brink of insolvency, or in a perilous financial state. Celsius has offered evidence that in this case, StakeHound is not just in perilous financial state, but is deeply, deeply insolvent. The evidence that StakeHound -- that Celsius offers includes that it provided 96 percent of the assets that StakeHound ever had to StakeHound. StakeHound specifically admits that it lost 60 percent of those assets, which leaves a $70 million hole in StakeHound's balance sheet.

THE COURT: Look, I must say, when I read your original complaint, I had understood you to be alleging that native ETH was an asset of the Debtor, property of the estate. And I understand cases like Grupo Mexico and many others. If this was property of the estate and you demonstrated a high risk of insolvency that it would support a TRO and preliminary injunction. Okay?

But what I read Grupo Mexicano and its progeny as saying the risk of insolvency -- and this was the whole

point of Grupo Mexicano -- it was almost clearly insolvent and that was the basis for the district court granting injunctive relief. And what I read the Supreme Court as saying, that is not a basis for injunctive, equitable relief. Okay. So I'm not doubting that a high risk of insolvency. I don't know what -- I'm putting high in front of it, but I don't think you could just simply assert, you know, well, we think they're insolvent. You know, Ms. Wickouski says you haven't demonstrated.

I think that her own comments at prior hearings where she said we need to be able to use this to pay attorney's fees for this action, for the arbitration, whatever the -- I don't know what the Israeli action, whether it was arbitration or a court case. Okay.

And what you've suggested about the disparity, you say you have a $160 million claim and StakeHound may have $90 million in assets. Let's assume you satisfy that requirement for irreparable harm. Okay. Ms. Wickouski can argue contrary, but I'm not deciding. But it does seem to me that you probably have established that element. But the question for me then is, okay, but what about Grupo Mexicano? Have you pled the elements of equitable claims that would entitle you to injunctive relief?

When I -- I'm not giving you all the cites. I've given you Judge Gerber's decision, the Owens Corning

decision from the Third Circuit, 419 F.3d 195. There's a decision by Chris Sontchi, Judge Sontchi, EHT US1. It's 2021 WL 3858556 from August 2021. You know, there are others.

I think here's a Fifth Circuit case, and I can't find my reference to it now, that -- on -- hang on. Let me see whether I have it here.

I don't seem to have it. I thought I saw a Fifth Circuit case that found in a fraudulent -- in bankruptcy, in a fraudulent conveyance claim equitable relief may be possible as well. But I think you got the drift of what I'm concerned about.

MR. HURLEY: I do, Your Honor. And again, I suppose at the conclusion of hearing you can tell us exactly when you would like to have this briefing. But we'll be prepared to give it to you whenever you need it.

THE COURT: Well, you're -- I don't mean this to be flippant. You and your client are the ones that are at risk until I decide the matter. So I'm sure Ms. Wickouski and her colleagues can start doing their work on something more than just Footnote 5 in the brief that they filed. I'm going to give her certainly a couple of days after you file your brief for her to file a response. I'm not -- I don't want to reply to that. Take your best shot and she can take her best shot.

MR. HURLEY: Certainly, Your Honor. And my understanding from the last hearing was that Ms. Wickouski had committed that StakeHound was not going to move assets until a further order of the Court.

THE COURT: Go ahead with your argument.

MR. HURLEY: But obviously she can address that. Okay.

So in terms of -- and if Your Honor is satisfied on insolvency, I can move on, or I can address the questions about the evidence that we presented in respect of insolvency.

THE COURT: Go ahead.

MR. HURLEY: Okay. So as I started to say, we presented evidence that 96 percent of the assets they ever had were provided by Celsius, that six percent of those assets were lost, which leaves this $70 million hole in the balance sheet.

StakeHound itself has said in its arbitration, Your Honor, that it had to shut the platform down specifically because it does not have assets sufficient to satisfy customer claims. And that is the essence of their arbitration, is that we don't have enough assets to pay people anymore, so we had to suspend the platform. That's their argument.

StakeHound, in the Ziotech case which we cite,

evidence of insolvency was similar in that it was relied mostly on statements that had been made -- I shouldn't say mostly, because we offered other evidence. But it relied in part on evidence of statements that were made by the Defendant concerning the risk of bankruptcy the Defendant was facing. And here, we have a similar situation where StakeHound has made statements of its own that it's effectively insolvent, including by indicating that if Celsius didn't give up its claim to the lost ETH, that StakeHound may have to into liquidation.

The cases that StakeHound cites in opposition we don't think change anything. So the Scheinman case, which doesn't involve allegations of insolvency at all. And they cite the Bay HK case, which is a case in which the movant actually admitted that its claims could be remedied through a payment of money damages. And the only evidence that -- sorry, the only suggestion that was made was that it was "unknown" whether the defendant could pay a judgement once its entered. We've obviously offered evidence in addition to that.

We think it's absolutely satisfactory, particularly on a motion for a preliminary injunction that involves less formal procedures and evidence than a trial. We cite Your Honor to the Supreme Court Camenisch case from 1981. And I'm quoting, "Given its limited purpose and given

the haste that is often necessary, preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than a trial on the merits." And under that standard in particular, we think that the evidence of insolvency is more than sufficient to meet that prong provided we can persuade Your Honor that an injunction is appropriate under those circumstances.

So with that, I would like to move on to likely success on the merits. And we talked at some length about the Citigroup case and its reaffirmation of the standard in the Second Circuit that you either have to demonstrate the likelihood of success on the merits or sufficiently serious questions going to the merits to make them a fair ground for litigation plus a balance of hardships that sits decidedly in favor of the moving party. We think we can make that showing on the merits under both standards here, Your Honor.

Let me begin with the claim for violation of the automatic stay. And I won't dwell on it because it mostly relates to the possibility that potential sanctions could render StakeHound even more insolvent.

THE COURT: Let me just say with respect to the violation of the automatic stay, I believe I have the authority -- whether it should be exercised is a different issue -- but I believe I have the authority to a range of

possibilities. I mean, this -- you know, I much earlier in this case pointed you all to the history in the MF Global case. You know, I think Ms. Wickouski can argue to the contrary. I believe the automatic stay was violated. And it opens up the range or sanctions that I could impose for violation of the automatic stay.

She has made a motion to dismiss for lack of personal jurisdiction. In order to impose contempt sanctions, I have to -- the Court must have personal jurisdiction to be able to do that. She has made a motion. It will be heard I think the same day that the preliminary injunction, the motion to dismiss, the motion to compel arbitration, they'll all be heard together. The Second Circuit and other circuits have substantial caselaw about the alternate ways that a trial court can deal with motions to dismiss for lack of personal jurisdiction. You know, when we get to the -- that -- I mean, I'll decide now what relief if any I should impose for violating the automatic stay. Okay. So I think that part of it -- I'm sure it's of great concern to Ms. Wickouski and her client, but I have less problem. I've made multiple comments during the course of this case about that. I think I view her motion to dismiss for lack of personal jurisdiction as her effort at a defense to the violation of the automatic stay.

Go on with your argument if you need to. But go

ahead.

MR. HURLEY: Thank you, Your Honor. I will move now to the claims with respect to the coins.

So with respect to the MATIC and the DOT to begin. So let me back up. There's MATIC and the DOT and there's the 25,000 November staked ETH. All of those tokens are available for transfer right now.

THE COURT: You say that I'm holding you hostage, holding your client hostage by not returning.

MR. HURLEY: We made that comment in particular with the MATIC and the DOT, Your Honor. And we did because MATIC and the DOT, unlike with the ETH where there was an excuse, one that we think borders on the frivolous, but an excuse provided for why they are withholding the ETH, they've never even tried to provide an excuse for withholding the MATIC and the DOT, which is worth approximately $40 million.

So the MATIC and the DOT, on May 25th, we demanded its return. And the agreements very clearly require StakeHound to return MATIC and DOT in exchange for MATIC and ST-DOT. We tendered our ST-MATIC and ST-DOT. They didn't do it.

Like I said, they don't really offer any kind of excuse. I mean, I guess conceivably they're going to say, well, the platform is suspended. They suspended the

platform I guess actually more than two years ago.

First of all, they've never suggested that there's any reason the platform needs to stay suspended with respect to the MATIC and the DOT. They don't claim that they don't have adequate MATIC and DOT to satisfy our claim. For example --

THE COURT: Have they asserted that any other parties have a claim to those same MATIC and DOT?

MR. HURLEY: No. They have made really -- they've provided no contention of any kind to justify what they're doing. They're just holding it.

With respect to the platform being suspended, there is -- even if they said they had a right to do it in the first place, it's not -- it's a -- the suspension has to be temporary and it has to be consistent with the duty of good faith and fair dealing under whether it's U.S. law or Swiss law that applies. And just simply holding on to our MATIC and DOT with no excuse is we submit a very clear violation of those principles and that we have an overwhelming likelihood of success or prevailing on the claims with respect to the MATIC and the DOT.

THE COURT: So let me just -- I'll actually read you from -- I've already cited Judge Gerber's Footnote 18 in his Adelphia opinion, 323 B.R. 345 at 360, Note 18. It's a very lengthy footnote. Okay.

And he says, "Grupo Mexicano was a case in which equitable claims had not been presented and an asset-freezing injunction was sought solely to protect a future money judgement." Here, Adelphia made substantiated claims of ownership of much of the Rigas' property and sought the equitable relief of imposition of a constructive trust and recovery of fraudulent conveyances.

"Since Grupo Mexicano was decided, lower courts have considered whether Grupo Mexicano bars asset-freezing injunctions under Federal Rule of Civil Procedure 64 or 65 where equitable claims have been presented. Those course have repeatedly and uniformly to date held that Grupo Mexicano is inapplicable to request for asset-freezing injunctions where plaintiffs seeking that relief have also made equitable claims."

He actually -- he cites a Second Circuit case, CSC Holdings Inc. v. Redisi, 309 F.3d 988, 996 (7th Cir. 2002). And he has a parenthetical that says -- this is a parenthetical from the CSC Holdings case. It says, Grupo Mexicano "Held that a district court may not issue an injunction freezing assets in an action for money damages where no equitable interest is claimed."

And then it goes on in the footnote where in the parenthetical where equitable relief for an accounting and resulting profit was sought in the alternative to claims for

money damages, Grupo Mexicano was inapplicable and asset-freezing injunctions were proper. So that's a cite to that case.

And then he cites a Fourth Circuit case, the Rahmen case, 198 F.3d 489, 496-497 (4th Cir. 1999). And the gist of it, he says when the plaintiff-creditor asserts a cognizable claim to specific assets of the defendant or seeks a remedy involving those assets, the Court may in the interim invoke equity to preserve the status quo pending judgement. And it goes on. You'll read these cases. Judge Gerber, as was his wont, the footnote goes on very lengthy. It's very scholarly.

So I understand your argument as to the MATIC and DOT. You say the Debtor has got an interest in it, and you want relief.

MR. HURLEY: Your Honor, thank you for those cites. We have a cite from the Dong case out of the Southern District that I think addressed this question as well. And I will provide that specific cite to you. Hold on a second.

THE COURT: Don't give it to me now. Put it in a brief. Okay?

MR. HURLEY: Okay. But basically holds that Grupo Mexicano did not overrule the long-standing rule here that -- where non-movants assets may be dissipated before final

relief can be granted and where the non-movant -- right.

THE COURT: If the Plaintiff claims an interest in those assets, yes, equitable relief is possible.

MR. HURLEY: So like I said, we submit -- we welcome the opportunity to submit further briefing and demonstrate we think the rule applies -- or sorry, that Grupo Mexicano does part of the relief here. But we understand you'll look for that in a further submission.

Regarding the question of success on the merits with respect to the stake services agreement and the November -- the 25,000 November ETH. So again, I want to reiterate that there is a contention by the other side in this case that the contract is at an end as of April 12th. Now, not suggesting that we necessarily agree with that or what the precise ramifications for that would be. But that is one of the reasons that we added the claims for equitable relief, because there is a contention in the case that the staking services agreement no longer applies.

With respect to that ETH, so there's no doubt that in their dispute that StakeHound provided the ETH and has demanded its return. The staking services agreement is attached to the Mann Declaration. It's Exhibit B to the Mann Declaration. And Section 1.4 of the agreement provides specifically that while the ETH won't be available until the upgrade happens, that -- which is defined in the agreement

as the termination date, Section 1.5 goes on to require StakeHound to transfer the November ETH, the 25,000 of stuff that they didn't lose, to a separate wallet and do it on the termination date.

And Section 1.8 -- and I should back up and say in the April 12th letter that we got from StakeHound, they claim that they in fact had undertaken that transfer.

Section 1.8 provides that following the successful transfer of the November ETH, Celsius shall be entitled to exchange upon availability its ST-ETH against ETH through StakeHound's platform.

StakeHound agreed that it would provide StakeHound native ETH on a one-to-one basis with ST-ETH. We tendered our ST-ETH. They didn't do it.

THE COURT: So are you asserting -- let me -- are you asserting that those writings from StakeHound give Celsius a claim to the specific assets for which you're seeking equitable relief?

MR. HURLEY: We do.

THE COURT: Okay. You'll make that point clearly in your brief.

MR. HURLEY: We will.

THE COURT: Okay. So with respect to the assets -- sorry, with respect to the claim, the response that has been provided by StakeHound we submit is not sustainable and

really borders on the frivolous. They give two responses. One is they say, well, you can only get your ETH back if you do it through the platform. But since we suspended the platform, you cannot get your ETH back. We submit that's inconsistent with the contract itself, which provides that you can only suspend the platform temporarily even if you do it. And under Swiss law as well as U.S. law, a right of that kind has to be exercised in good faith and it would be absolutely inconsistent with the duty of good faith to allow them to say we lost your eth, therefore we had to suspend the platform. And because this platform is suspended, you can't get back the ETH that we didn't lose.

THE COURT: I think -- and Ms. Wickouski can address this as well. If you believe that the contract or the subsequent writings from StakeHound establishes Celsius' right in property, then I'm sure when you look through these cases, you'll find many cases that say where the plaintiff is seeking to recover property in which it has an interest, that that can provide a basis for injunctive relief, equitable relief, even if they also have legal claims.

But I want to see that -- I mean, I'm not criticizing either party for the briefs they filed, but I have lots of questions, and you're going to answer them.

MR. HURLEY: Understood, Your Honor. And we look forward to the opportunity to do that. And we believe that

kind of property interest exists here and look forward to demonstrating that.

The other response that StakeHound makes in terms of explaining why they haven't returned the ETH that they didn't lose is they claim now, in a manner that is inconsistent with the words of the contract and the words of the parties over time that rather than being required to return ETH over on a one-to-one basis, one ETH for one ST-ETH, they now claim, again, for the first time in their arbitration -- that's the first time we saw this in their arbitration -- they said that in fact they are only required to provide as much native ETH as is necessary to equal the Fiat value of ST-ETH --

THE COURT: Yeah, I --

MR. HURLEY: -- (indiscernible) the $50 million. That is their position in the arbitration. We don't think either one of those defenses is remotely plausible and that Celsius has an overwhelming probability of succeeding on the merits of the case if this case proceeds.

THE COURT: You know, I think I made a comment at the last hearing, and you may or may not agree with it. But I think I put this in one of the orders I entered. If Ms. Wickouski prevails on the motion to compel arbitration, it may well be -- I'm not saying for sure, but it may well be that the equitable relief that I would order would remain in

place until an arbitrator can decide whether as precautionary measures it could impose whatever relief it believes is appropriate if the matter is arbitrable.

I can't remember now -- I've had this issue come up years ago. And, you know, that may be an issue for another day, but we'll see.

MR. HURLEY: Okay. Understood, Your Honor.

THE COURT: And your arbitrator probably isn't going to be bound -- won't be bound by Grupo Mexicano.

MR. HURLEY: Thank you, Your Honor. We obviously agree that Your Honor has that authority.

So based on what we just described, we think that Celsius' likelihood of success is overwhelming. We also note under Citigroup that if we can also show that the balance of harms weighs very strongly in favor of Celsius that we don't even have to show likelihood of success. We can rest on significant questions --

THE COURT: You know, look. I've applied that injunction standard multiple times before. It's an alternative standard. Okay? And I agree that's the standard. That's not what was hanging me up.

MR. HURLEY: I understand. So let me turn to the balance of harms. Because we do believe that the balance of harms weigh overwhelmingly in Celsius' favor in this case.

Let me first talk about the harm to Celsius. And

again, today we are only asking for relief that would endure for about four weeks. Your Honor will have a chance to revisit with any questions related to what's going to happen going forward on September 27th.

So with respect to Celsius, any harm that it would suffer by assets that are the subject assets being spent in the next four weeks is permanent. Celsius has offered evidence that StakeHound has only $90 million of assets and a $160 million claim. It's already not going to get full satisfaction of any judgement it gets in the case. And every dollar that gets spent between now and September 27th is another dollar that can't be recovered by Celsius for the benefit of its creditors. Again, that's likely permanent harm.

Turning to the harm that would be to StakeHound in the event the TRO was granted. So first, StakeHound says that it has some operational needs. The Castellana Declaration includes a paragraph where he says that he needs $80,000 a month. He doesn't detail why he needs $80,000 a month. He includes some categories, but he doesn't break it down amongst them. So, for example, one of the things he says he needs money for is to pay the contract rate to operate the notes without applying discounts or rebates to that rate. He doesn't identify what the contract rate is. He doesn't identify what it would be after the discounts and

rebates are applied. Our information is that order of magnitude-wise supporting those notes is more on the order of $10,000 per year.

He also says there are some salaries that need to be paid. He doesn't say who, he doesn't say why, he doesn't say what. And he says that their ordinary business expenses need to be paid. We're not sure what those would be considering that StakeHound appears to basically be collecting rewards and doing nothing more than that.

But notwithstanding that, this is exactly the kind of expense concern that is addressed by the release valve in our TRO. So if there is a payment that needs to be made in the near term, they can come to us and say, hey, to preserve the assets, really need to pay it in a week.

THE COURT: Mr. Hurley, I don't want to have one or more hearings a week before a preliminary injunction hearing to deal with, yeah, StakeHound needs another X dollars to do this. If I was going to have a carveout pending the preliminary inunction hearing, it would be a dollar amount. I just am not going to put myself in the position where I'm micromanaging every dollar of expense that StakeHound has between now and the end of September.

MR. HURLEY: Understood, Your Honor. With respect to actual operating expenses, it appears that even by their own sort of -- what they're saying they need, it's a

comparatively small amount.

Now, with respect to legal fees. They have indicated that they want to spend very substantial sums on legal fees in the next four weeks. Again, if StakeHound is permitted to spend funds on legal fees in the next four weeks, those are funds that can never come back and are lost dollar-for-dollar from any judgement.

The harm to StakeHound on the other hand is not permanent. It may be that on September 27th Your Honor decides that there should be a carveout and that there should be a carveout that encompasses legal fees. If that happens, Your Honor determines that, then all you will have had is a delay of a few week. A delay of a few weeks for payment of services since the time that they are rendered for lawyers and law firms is extremely common. In fact, it can be much, much longer than a few weeks in ordinary practice.

Now, if Your Honor on September 27th concludes that a carveout is not appropriate, then the fact that they didn't get one now is not an injustice because they weren't entitled to one in the first place.

StakeHound suggests that if they don't have this carveout to be able to pay their fees in the next four weeks, that it's going to impede their ability to hire counsel. But the evidence shows just the opposite.

StakeHound has been laboring from the very beginning of this case under the possibility that a freezing order would be entered, that a freezing order would prevent them from using the subject assets to pay legal fees. It has not prevented them from mounting a vigorous defense to virtually every step that Celsius has taken in this case. There is no suggestion that if the TRO was entered, that StakeHound's counsel is going to resign in the next four weeks, or that it even could, frankly.

This is like the MarketXT case where in MarketXT, the defendant had come forward and said I want relief to be able to pay outstanding fees for my lawyers and it's going to impede my defense if I don't. And the court noted, well, your lawyers have been frozen for months, and yet they have continued to litigate. It has not impeded your ability to mount a defense. Same thing is true here, Your Honor. It clearly has not impeded their ability to mount a defense.

I just want to say finally I guess Your Honor here in terms of that question in particular, what Celsius would like to do and has been focused on from the beginning really here is, is there a way to bring the parties together and make some kind of a deal. And we would submit that if StakeHound is provided with effectively a war chest for the next four weeks, that war chest is going to get used. Because it's money that comes from a $90 million group of

assets that's subject to claims of $160 million from Celsius. It just stands to reason there's not going to be much incentive for them to do anything other than continue to litigate with extreme vigor. I'm not saying they won't do it anyway. Obviously, as I just said, (indiscernible) vigorously already.

But for there to be a chance for parties to make some kind of an agreement, everybody's got to have an incentive. And under the circumstances here, if there is a possibility that StakeHound could continue to use these assets, that we at least contend are assets that are going to be subject to a very substantial claim, that incentive isn't going to be there. And that's really the way we would like to see things move forward.

And then just a final point, Your Honor. It relates to the arbitration.

THE COURT: What do you understand the value of the MATIC and DOT to be?

MR. HURLEY: It changes every day, Your Honor. But recent prices, it was around $40 million.

THE COURT: Okay. Go ahead.

MR. HURLEY: Okay. So with respect to the arbitration, there's just one final point. I think it's almost in the nature of housekeeping. As we provided in our August 21st letter to Your Honor, an email that we received

from the arbitrator on August 18th. And that hasn't been responded to yet. The arbitrator asked -- so after the hearings in front of Your Honor, we sent a joint letter to the arbitrator on August 11th. And it was on my letterhead and I copied counsel for StakeHound. And in the August 18th letter, the arbitrator wrote back and said first of all, StakeHound, please just confirm that you agree with Mr. Hurley's letter, that it's effectively legitimate. And then a question about whether or not this is -- what's going on is a suspension. And there hasn't been a response yet to that letter.

And the TRO that we're asking Your Honor to enter, it would require a response that we think is appropriate under the circumstances, basically everybody saying yes, we understand the letter from Mr. Hurley, we agree with, and we're looking for a suspension until further notice.

THE COURT: Would you agree that an order entered by the court that orders the parties to suspend all activity in connection with the arbitration pending further order of the court, would that solve your problem on this?

MR. HURLEY: I believe it would, Your Honor. And yeah, I believe it would. My hope would be that in addition to that, StakeHound would also respond and just say, you know, we authorize the letter. But yes --

THE COURT: They don't need to authorize my order

if I enter an order.

MR. HURLEY: Correct.

THE COURT: They can violate an order at their own risk.

MR. HURLEY: Entry of an order would certainly satisfy our concerns.

So, Your Honor, that's all I have for now. Obviously you've asked for some additional briefing and we will get right on it. But other than that, unless Your Honor has other questions, I will yield the podium.

THE COURT: How much time do you want for a brief? Your minions are not going to be happy with your answer. I don't mean to disparage them. It's a great team you have.

MR. HURLEY: Thank you. I agree. Can I speak with them offline?

THE COURT: Yes, you can.

MR. HURLEY: I think it's a matter of a day or two.

THE COURT: Okay. Speak to them. I've given you a bunch of lead-ins of citations.

MR. HURLEY: Very much so, Your Honor. We appreciate that. And we'll address those.

THE COURT: Ms. Wickouski, go ahead.

MS. WICKOUSKI: Thank you, Your Honor. For the record, Stephanie Wickouski, Locke Lord, on behalf of

StakeHound.

Your Honor, I think Mr. Hurley has been speaking for about an hour here, and there's a lot to unpack. So if Your Honor would bear with me.

THE COURT: I will.

MS. WICKOUSKI: I would like to address points maybe not in any particular order. And I would like to start out, and I want to come back to this. But with the last point that Mr. Hurley made. And Celsius wants the Court to prevent my client from spending a dime to preserve its own assets or pay its legal fees.

THE COURT: Actually, the last point he made was about a letter to the arbitrator. And that was the last point he made.

MS. WICKOUSKI: You're correct, Your Honor. And forgive me if I glossed over that as perhaps being non-substantive. Our client's Swiss counsel has been ready to reply to the letter to confirm our agreement to it and actually had held off pending the outcome of this hearing because Celsius has asked for specific language. It would be our preference that we respond and confirm that the Swiss counsel confirmed --

THE COURT: This is you I'm going to deal with right now.

Mr. Hurley, draft a proposed order. Share it with

Ms. Wickouski. If you can't get an agreed form of order by tomorrow, each of you can submit to me separate ones. I thought this issue, Ms. Wickouski, was going to be put to bed long before today. It hasn't. So I'm not going to get into whether your Swiss counsel thinks that one form of language is better than another. I am going to enter an order directing that the parties cease all activity pending further -- in the arbitration pending further order of the court. If you violate it, Mr. Hurley will be back for contempt. Okay?

MS. WICKOUSKI: I understand, Your Honor. We --

THE COURT: No, stop. Stop. I don't want to hear that Swiss counsel was waiting to hear what happened today. This should have been resolved. It's resolved now. I will get either an agreed form of order or separate forms of order tomorrow. And by tomorrow at noon an order will be entered on that. And, Mr. Hurley, you can forward a copy to the arbitrator or not. But that's not a complicated issue.

MS. WICKOUSKI: Thank you, Your Honor. And just to be clear, the reason we were waiting was because if Your Honor agreed with the form of letter that Mr. Hurley had proposed --

THE COURT: Ms. Wickouski, we are beyond that. Either I'll get an agreed form of order or I'll get your two orders. One will be entered by the end of the day tomorrow.

So I want either an agreed form of order by noon tomorrow or separate forms of order. And by the end of the day, there will be an order entered. We're not going to -- there isn't going to be any further negotiation. Swiss counsel is not going to be involved. This is a violation of the automatic stay.

And at the end of the day I'll tell both of you I still think that, you know, you probably are both going to be better off having this arbitrated. It's Swiss law that governs. But that's not for today's issue. Okay? But for today's issue, I'm just telling you the Court is going to enter an order. You can either have an agreed form or submit your separate forms and one will be entered by the end of the day tomorrow.

Go on with your argument.

MS. WICKOUSKI: Thank you, Your Honor. Let me talk about the elephant in the room, which is that this is a TRO hearing. And I realize that the standard is loser and not as high as a preliminary injunction or an actual trial. But the elephant in the room is that we have, even though our client did not have the burden, we have submitted evidence, we have submitted a declaration, and we have a witness available for cross-examination. None of that is true with respect to the Plaintiff.

THE COURT: Let me be clear that I understand the

law on TROs. I do not have to hear witnesses testify. I can do it solely on the papers.

MS. WICKOUSKI: I understand.

THE COURT: So we're not hearing witnesses today.

MS. WICKOUSKI: And, Your Honor, with respect to the declarations the Plaintiff has submitted, we have objections to them. And we would like to be able to present those objections.

But getting right to the point, even under -- and Mr. Hurley has made a lot of arguments that this fact hasn't been contested or this statement is admitted (indiscernible). Perhaps he hasn't read our papers. We have submitted both the agreements applicable and the statement of Mr. Castellana concerning the negotiation of those agreements as well as, fast-forward to the present, the present need to pay operating expenses and to pay legal counsel and the uses of that. And he would certainly be able to provide more detail to respond to a number of things that Mr. Hurley said, which are not in evidence.

And before I leave this point, while I understand the appeal of cutting off the other side's right to pay their counsel or ability to pay their counsel, this is not an appropriate tactic for a plaintiff to engage the court in. And particularly here where the evidence of record, and really the only evidence of record, indicates that the

assets that are at issue are not property of the estate. I think even --

THE COURT: Is that true as to the MATIC and the DOT? Because I will -- because it certainly sounds to me that the Debtor has a property interest in the MATIC and the DOT. Put aside the staked ETH. But as to MATIC and DOT, Mr. Hurley, I will look at the supplemental brief, but it certainly sounds that as to the MATIC and DOT, they do have a property interest.

MS. WICKOUSKI: Well, Your Honor, we disagree with that. We think this is covered by the terms and conditions and the revenue sharing agreement.

But I think that it's probably not an issue that the Court necessarily needs to address at the TRO because we have proposed that we would abide by a freezing arrangement subject to an appropriate carveout. And so I think even Mr. Hurley said that the MATIC and DOT in their estimation is $40 million, but he says that the assets of our client is $90 million. I am not conceding those figures. But I think that the expenses that have been proposed that are necessary in Mr. Castellana's affidavit are far, far less from even touching the level of $40 million. I think we're talking about $2 million and the need for that.

I think particularly -- I mean, I'm not conceding that there's been a showing for a TRO here because the

evidence that's been presented such as it is by the Plaintiff are four declarations. Three are declarations of counsel and one is a witness who does not have personal knowledge. What we have submitted is a witness with direct personal knowledge as well as the agreements that clearly state that these assets are not property of Celsius. And I think --

THE COURT: As to the MATIC and DOT?

MS. WICKOUSKI: Mr. Castellana is here, but our view is that those assets were transferred as well. I realize that there has been an issue raised there, and we're not proposing today that -- you know, I think what we would be willing to agree to as an interim continuation of the freeze order wouldn't affect the MATIC or DOT.

THE COURT: Go ahead with your argument.

MS. WICKOUSKI: I point to one thing that -- and there have certainly been a lot of statements that have been made this morning, but there's one comment that was made by Mr. Hurley where he points to correspondence indicating -- and I think this was an email attached to the declaration that we want to object to -- about a one-to-one exchange. And if you read lines back to his comments, when I heard that, it sounded like a contract dispute, a breach of contract dispute. An exchange suggests that what is being exchanged from one party to the other is not the property of

solely one party. Because why would there be an exchange if what Plaintiff was trying to exchange for was their property in the first instance? It also suggests that they have to provide something in order to exchange. And that really belies their theory that this is their property.

So, I mean, I could go back to -- again, we've been listening to this for an hour. There are a number of statements --

THE COURT: I haven't been listening quite an hour because of technical problems I had. But close to it.

MS. WICKOUSKI: Yes. Thank you. Thank you, Your Honor.

So I think on the -- this is a TRO. And putting aside whether a freezing order is even appropriate where it's primarily or entirely a breach of contract claim, I know that the Plaintiff's position is that these are actually equitable claims. But their equitable claims in their amended complaint all emanate from the position and the view that these are their assets. And we have this in the face of a contract that says clearly the contrary.

So I think it's not a question of do they have to show likelihood of success --

THE COURT: May I ask --

MS. WICKOUSKI: Yes.

THE COURT: You argue that they have failed -- in

the amended complaint that they have failed to properly allege equitable claims? Because, look, Ms. Wickouski, if you disagree, you'll get a chance to put this in a brief. But the way I read the law is that if a Plaintiff can properly assert both legal and equitable claims, equitable relief with respect to the equitable claims is available. They have to satisfy the -- I'm not saying it's automatic at all. They have to satisfy the high burden. But it's not uncommon for courts to get complaints that allege both legal and equitable claims. So certainly if you -- when you file -- if you were going to file another brief, if you want to address why you don't believe the amended complaint properly asserts equitable claims, you can do that.

I'm not -- making it crystal clear. I'm a long way from deciding that they've properly alleged equitable claims that would support a TRO and preliminary injunction. I'm not.

MS. WICKOUSKI: Well, that is -- and maybe I said it unartfully. But precisely what I'm saying is that they haven't properly pled equitable claims or actually they haven't provided any evidence in support of even a colorable claim that would be sufficient for the basis to enter a TRO.

And I realize that maybe they're not required to under the timeframe to bring in witnesses, but they're required to make some sort of showing.

And I get back to the fact that there's four -- that we have a witness with actual knowledge, and we submitted contracts. They have submitted four declarations. Three of them are from counsel. Two of them are from Swiss counsel. And I find that really ironic given that one of the things we're fighting about, and we're even righting about whether we should be fighting about it, is whether the Plaintiff should be compelled to go to Switzerland, but yet two declarations from Swiss counsel.

And then declaration with respect from the U.S. counsel --

THE COURT: The contract is governed by Swiss law. So I don't know why you think it's so unusual that we have a declaration from Swiss counsel.

MS. WICKOUSKI: And it is indeed governed by Swiss law, which precisely gets to our issue of arbitrability.

But with respect to the one declaration that is not from counsel, it is from a witness that does not have personal knowledge and was not even at Celsius at the time that these transactions were negotiated. And there's a lot of commentary I think in the first declaration of Mr. Desser about how the intent of the parties is relevant under Swiss law.

And so I think that this all goes to has the Plaintiff made a sufficient showing of an issue -- I'm not

even going to say likelihood of success on the merits. That's what I believe. But I know that parties can disagree as to how high that standard is and whether it's applicable or whether there's a lower standard of an issue that gives rise to an issue under the merits. I don't think even the lowest standard has been met with respect to the merits. And I would say, again, elephant in the room is what is the competent evidence that's before the court. At the last hearing, Your Honor, I think you exhorted Mr. Hurley to come in last week at a TRO hearing with competent evidence. We would submit that that has not been met, and I realize this is TRO, but most of what we've heard today is the statements of counsel.

And not to sound like a broken record, Your Honor, but Mr. Hurley doesn't get to testify. And it's ironic that I've said that now, I think, at every hearing and what did we see, a declaration from Mr. Hurley. There needs to be competent testimony submitted by a witness with actual knowledge and direct knowledge, particularly when what is at issue is whose property is this and we have agreements that govern specifically that question.

And, Your Honor, I would only ask that if the court is going to consider the admission of the declaration submitted by plaintiff, that we have the opportunity to object and cross-examine those witnesses. I don't think --

THE COURT: There isn't going to be any cross-examination for a TRO. I've made clear that if we get to the preliminary injunction hearing, all witnesses are subject to cross-examination, and the two of you need to confer about whether they appear by Zoom or in person. You'll work that out. That's crystal clear. If we get to a preliminary injunction hearing, there will be live testimony subject to cross-examination.

MS. WICKOUSKI: Yes, Your Honor. So I would ask that we offer into evidence Mr. Castellana's declaration and exhibits.

THE COURT: Mr. Hurley?

MR. HURLEY: We don't object to Your Honor considering the declaration. I mean, our understanding from the prior hearing was that this is a non-evidentiary hearing.

THE COURT: Well, it's an evidentiary hearing in the sense that -- I'm not having cross-examination, clear. But a TRO has to be supported by competent evidence, and the opposition has to be supported by competent evidence. It may be subject to cross-examination at a preliminary injunction. But so I take you to be saying you're not objecting for purposes of the TRO hearing to the court admitting in evidence the Castellana declaration and exhibits. Is that correct?

MR. HURLEY: Let me back up, Your Honor, I guess, because my understanding was that both sides' declarations were going to be admitted for what they're worth, and Your Honor will make a decision about their value. And to the extent that's the case that we certainly think that all of the declarations should be considered by Your Honor on exactly --

THE COURT: But right now, I'm asking about Castellana declaration and exhibits. If you want to -- if you believe you have a proper objection, go ahead and assert it, and I'll rule on it. On a TRO on notice, which this one was, the defendant certainly can oppose the TRO, offer evidence which it believes should be considered by the court and Ms. Wickouski has done that.

MR. HURLEY: So Your Honor --

THE COURT: We're not going to trade off, Mr. Hurley. You're either -- do you object to the court admitting into evidence for purposes of a TRO hearing without cross-examination today the Castellana declaration and exhibits? It's a yes or a no.

MR. HURLEY: The Castellana declaration includes substantial statements that would not be admissible at a trial. If that's the standard, then we object.

THE COURT: Okay. All right. I note your objection. I'm not ruling on it now. Go ahead. Go ahead,

Ms. Wickouski.

MS. WICKOUSKI: Thank you, Your Honor. There's just one more point that was made in the papers that I do want to address, which is the risk of dissipation and the balance of the harms. Counsel stated that on the balance of the harms, the damage to Celsius is permanent, but not clear what that damage is. The damage to StakeHound, on the other hand, is permanent or at least more permanent because the impact of freezing all of their access to funds and precluding them from paying operating expenses which are needed to maintain the equipment, to maintain the tokens, as well as not being able to pay their lawyers to pursue a very valuable claim as well as not be able to pay its lawyers to defend claims that their assets are their assets, it seems that the balance of the harms obviously favors our client.

And not to beat the drum about this, but while I understand the appeal of not wanting your opponent to be able to pay their counsel, that is not a proper tactic to involve the court in. And besides, the amounts here that Mr. Castellana in his affidavit have stated that are necessary over this time period, given the extent of the litigation, and this is not just the U.S. litigation, but Israel, which is an affirmative case, really pale in comparison to the resources that are being expended on the other side.

So I find the idea that we come back to the court every time we want to pay a bill to be a waste of the court's resources, but also really disproportionate under the circumstances.

THE COURT: May I ask you this question? Mr. Hurley said that his statement of belief that StakeHound has assets of approximately $90 million. Do you agree with that?

MS. WICKOUSKI: May I have a moment?

THE COURT: Yes, go ahead.

MS. WICKOUSKI: Your Honor, unfortunately I don't know the answer to that question. I don't have a detail on that. I do have the principal of our client here that we could ask or certainly allow -- make him available for the court's question in that regard.

THE COURT: I don’t intend to take testimony today. I was asking you whether you agree. If you're not in a position to respond to it, that's fine too. It was a statement, not evidence, that Mr. Hurley made that StakeHound has approximately $90 million in assets, and I just wanted to see if you had a response to that.

MS. WICKOUSKI: Yes, and unfortunately, Your Honor, I don’t. I want to give the correct answer, and I don't.

THE COURT: Okay. Go ahead with your argument.

MS. WICKOUSKI: So lastly I do feel that the debtor has, throughout this proceeding, suggested that it's really -- the court should only look at the fact that the creditors' interest are impacted by this case, and those are the ones being protected at this stage. I understand that this is a claim that may, at some point, go to a litigation trustee. However, it can't be forgotten that what the debtor comes in with in terms of their claim is based on transactions that occurred long before this point.

And a litigation trustee, if he ultimately gets this case, is not going to have any better, greater rights or better, greater equities than what has already transpired between the parties and the transactions at issue. So I don't think that that in itself should have any bearing on whether there's a freezing order, whether the TRO standards have been met. This is basically two parties in what I would say is a contract dispute. And that's really all that's at issue.

THE COURT: For now, I'm struggling to see whether we get to the June 27th hearing. Okay.

MS. WICKOUSKI: And, Your Honor, I lastly want to talk about an issue that I think was raised in Mr. Hurley's reply, which is whether the fact that in our discussions that we, in the negotiations, we requested a carveout and now have requested a larger carveout, that that is somehow

evidence that the plaintiff is at risk of us dissipating assets. And that doesn't make any sense --

THE COURT: Let me -- I'm going to stop you there, because I probably raised the carveout issue before Mr. Hurley did. And I don't fault either side for being unable to come to an agreement. I wish you had. There obviously was a short-term agreement, but that's -- so I'm not holding that against you. I'm not drawing any inference from the inability to come to an agreement. You and your client maybe are perfectly within your rights to say, no, we don't think there should be any freezing order, period. So that part I really am not holding this against you. Okay.

MS. WICKOUSKI: Thank you, Your Honor. And we have consistently -- our client has abided by a total freezing order for more than two weeks now. And if they were going to dissipate assets, I mean, technically they might not have been required to do that when we got past last Thursday, which was the original TRO hearing date. But they have. They have abided by that to this moment.

And we were hopeful, at least, of a disposition that would allow them clarity as to what they were able to pay and be able to pay some bills. Again, we recognize that the estate has an interest in protecting its position, if you will. We're not trying to be difficult in terms of an agreement, but we are simply not able to agree that our

client can't spend any money, can't pay its bills, can't pay its lawyers and essentially is put out of business tomorrow --

THE COURT: Look, again, I'm not -- I really am not -- I wish you all came to an agreement. You've not been able to come to an agreement. At the last hearing, I raised questions about of the assets that StakeHound appears to have, how much of that is attributable to Celsius, how much is not attributable. Is it possible to agree that -- and I understand that Celsius believes that it has a claim for $160 million. But for that portion of the assets that are not attributable to Celsius, can an agreement be reached? You haven't been able to, so I've got to decide what I've got to decide.

MS. WICKOUSKI: I understand, and --

THE COURT: It's not too late to agree. I mean, I just --

MS. WICKOUSKI: Well, I think everybody always prefers to have an agreement, Your Honor.

THE COURT: Go ahead.

MS. WICKOUSKI: Your Honor, may we be heard on our objections to the plaintiff's declarations? I understand, Your Honor, that you're going to admit them.

THE COURT: Yes, go ahead. Go ahead.

MS. WICKOUSKI: May I turn this over to my

colleague, Mr. Kramer, to present those objections?

THE COURT: Sure.

MR. KRAMER: Thank you, Your Honor.

THE COURT: Good afternoon. You're muted. I'm not hearing you.

MR. KRAMER: Sorry about that.

THE COURT: Go ahead.

MR. KRAMER: With respect to Mr. Man's declaration, we object on the grounds that he has no personal knowledge of the negotiations and the execution of the relevant contracts that he attached to his declaration. He admits in his declaration that he only joined Celsius in February of 2022, which is over a year after those contracts were negotiated and executed.

THE COURT: You're not disputing that the contracts, that those are in fact the contracts?

MR. KRAMER: We're not disputing that, right. Those are, in fact, the contracts. They were negotiated and executed over a year before Mr. Man actually joined Celsius. He had no involvement in the negotiations of those contracts, and he started his employment after they were executed. With respect to Dr. Dasser's declarations, we object to those to the extent that they are expert legal conclusions about Celsius's likelihood to succeed on the merits of claims under Swiss law. We contest that those are

determinations for the court to make and not a lawyer. Ultimately those are items --

THE COURT: With respect to foreign law, foreign law is provable, including by declarations. For a preliminary injunction hearing, if you want to call or submit direct testimony of a Swiss law expert, you can do that. But that is a proper way to present evidence of foreign law. I'm not an expert on Swiss law, and it would be -- so for that part, your objections is overruled.

MR. KRAMER: I think we at least want to draw a distinction between Dr. Dasser's first and second declarations because we did see the cases that say that foreign law is provable by an expert. That's certainly routine.

THE COURT: Rule 44.1, I think it is --

MR. KRAMER: Right.

THE COURT: -- in the Federal Rules of Civil Procedure.

MR. KRAMER: And with respect to his first declaration, to the extent that he is simply stating Swiss law, what Swiss contract interpretation is like or what remedies are available, which is what his first declaration is doing, that is fine. The reply declaration is just argument, legal argument in a vacuum. We have no idea what documents and information he considered in making a

determination that the arguments made in StakeHound's opposition would violate Swiss law or be a violation of the duty of good faith under Swiss law. All he said is that he read our opposition and he read the declaration. So to the extent that he is drawing a legal conclusion and making an argument in that declaration and not just facts about what the state of Swiss law is, we do object to that declaration.

THE COURT: So for the purposes of the TRO hearing, your objections overruled.

MR. KRAMER: And then finally, with respect to Mr. Hurley's declaration, as we said in our papers, we object that this discloses confidential settlement negotiations. We also object on the grounds that statements of counsel are not admissible evidence. And finally, on relevance grounds, as I think Ms. Wickouski was just stating, that the negotiations of a carveout are irrelevant to the ultimate issues, certainly on this hearing.

THE COURT: I agree. I agree.

MR. KRAMER: Thank you, Your Honor.

THE COURT: Put it this way. I said this already. I had hoped you would all be able to agree on it. You didn't. Full stop. Okay. I'm putting no weight in the fact that you were not able to agree on a carveout.

MR. KRAMER: Thank you, Your Honor. Those are our objections to the declarations.

THE COURT: Okay.

MR. HURLEY: May I respond, Your Honor?

THE COURT: Let me see if Ms. Wickouski has more she wants to say.

MS. WICKOUSKI: Your Honor, thank you. We have nothing further. We would ask the court to give us some clarity in terms of the TRO request because, frankly, at this moment, leaving the hearing, we're in a bit of a state of limbo.

THE COURT: Well, what I want to ask you -- so I've told Mr. Hurley that I expect a further brief from him, and I'm going to give you an opportunity to respond. I think it was Footnote 5 and some text around that that very briefly addressed some of the Grupo Mexicano issue. I'm not sure I agreed entirely with the statements in there. If I were writing the brief, it probably would have been a stronger statement.

So I'm going to give you a chance. I don't want to let any of this linger. Okay. So when we finish, I'm going to come back and ask Mr. Hurley how much time does he want to do this. I'm going to give you a chance to respond. If he's going to take a couple of days to do a further supplemental brief, I'll give you a few more days to file a response to it. Okay.

MS. WICKOUSKI: Thank you, Your Honor.

THE COURT: Okay. All right. Is there anything else that you want to add at this point, Ms. Wickouski? I'll come back to you on the briefing. Hopefully you understand what it is I'm asking about. I tried to give everybody --

MS. WICKOUSKI: Yes.

THE COURT: -- guidance about what I've -- well, I've been busy. My law clerks have been busy researching on this. Okay.

MS. WICKOUSKI: Yes, Your Honor. Thank you. It's very clear.

THE COURT: Mr. Hurley, go ahead.

MR. HURLEY: Thank you, Your Honor. So just responding to the objections to the -- I guess I should back up. And if we're offering declarations into evidence, I'd like to offer the declaration and I'll respond to the objections that were made to the declarations, I should say. So with respect to the objection that I just heard Mr. Kramer articulate regarding Mr. Man's declaration --

THE COURT: Yes.

MR. HURLEY: -- he complained that Mr. Man was not at the company for the execution negotiation of the contracts. What Mr. Man is doing is attaching documents that are available to him as an officer of StakeHound, including emails, including contracts. I don't think we

ever contended that he was there personally present for the negotiations or that we specifically focused in this brief on the content of those negotiations. What he did was take business records that are available to him as head of staking at Celsius currently, and attach them to his declaration and authenticate them. And we think that is --

THE COURT: There was no objection to the documents. I understand. So the objection to the Man declaration is overruled.

MR. HURLEY: Okay.

THE COURT: I'll give it such weight as it's entitled to receive.

MR. HURLEY: And I understand that the objection to the Dasser declarations have also been overruled, unless I'm mistaken. Okay. With respect to the Hurley declaration, I don't think there's an objection to anything other than the discussion of the spend. And Your Honor has already addressed that. Unless Your Honor has questions for me, I --

THE COURT: I don't need to hear more of that. Look, I wish you all could reach an agreement, and you either will or you won't. What can I say?

MR. HURLEY: Okay, and that's all I have, Your Honor.

THE COURT: How much time do you want for a brief?

MR. HURLEY: So, you know, we can do it tomorrow.

THE COURT: You tell me. It's easy for you to say, but I suspect that you have some colleagues who are going to be, at least in the first instance, doing that work. So tell me.

MR. HURLEY: I guess we would propose submitting it tomorrow by, say, 3:00 p.m.

THE COURT: How about 5:00 p.m.?

MR. HURLEY: 5:00 p.m., it is, Your Honor.

THE COURT: You know, I can remember, when I was practicing law, my associates would cringe when a judge would ask when are you going to submit the brief, and it's their lives who are going to be affected by it. All right.

MR. HURLEY: They will appreciate the extra time.

THE COURT: Supplemental brief by 5:00 p.m. tomorrow. All right. Ms. Wickouski, how much time do you want to respond?

MS. WICKOUSKI: Your Honor, we would appreciate at least having a day, and maybe --

THE COURT: How about Friday at 5:00?

MS. WICKOUSKI: That's perfect, Your Honor. Thank you.

THE COURT: Okay. After I review the briefs, I'll decide whether I need -- hopefully, I don't think I'll need a further hearing, but I'll have those briefs in hand.

Okay.

MR. HURLEY: Okay.

THE COURT: All right. Anything else for today?

MR. HURLEY: Not from Celsius.

THE COURT: All right.

MS. WICKOUSKI: No, Your Honor. Thank you.

THE COURT: Thanks very much. And I apologize for the technical problems I had. Tough issues for me. All right. Thank you. We are adjourned.

(Whereupon these proceedings were concluded at 12:47 PM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: August 30, 2023

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